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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re A.W., a Person Coming Under the Juvenile
Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

R.W.,

Defendant and Appellant.

F077938

(Super. Ct. No. 518010)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Maria Elena R. Ratliff, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Meehan, Acting P.J., Snauffer, J. and DeSantos, J.

INTRODUCTION

Appellant R.W. (mother) is the biological mother of A.W. Mother's parental rights were terminated at a Welfare and Institutions Code¹ section 366.26 hearing. Mother contends the juvenile court erred in terminating her parental rights. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

A section 300 petition was filed on behalf of the minor on July 12, 2017, when she was approximately two months old. The petition set forth allegations pursuant to section 300, subdivision (b). The petition alleged that mother has Stickler syndrome, a genetic disorder that affects the learning and developmental capacity of an individual. Mother reported "she cannot control her anger and struggles to understand things." The maternal grandmother reported that mother "does not have the capacity to care for a young infant on her own." The maternal grandfather reported that mother was "in special education all of her life and has difficulty processing information." Mother's first child, R.W., was removed from her custody because of mother's inability to care for the child.

On June 22, 2017, the Stanislaus County Community Services Agency (agency) received a referral from Valley Children's Hospital expressing concern about mother's ability to care for A.W., who was medically fragile. A.W. has Pierre Robin syndrome² that requires "specific and special care." Mother had difficulty grasping instructions on how to feed and hold the infant and mother did not follow the instructions given to her by the nursing staff. Mother was heard by hospital staff to scream at the infant, " 'Why are

¹ References to code sections are to the Welfare and Institutions Code unless otherwise specified.

² Pierre Robin syndrome is a genetic condition in which an infant has a smaller than normal lower jaw, a tongue that falls back in the throat, and difficulty breathing. <<https://medlineplus.gov/ency/article/001607.htm>> (as of January 3, 2019).

you so fussy today!’ ” Hospital staff also heard a loud “ ‘bang’ ” coming from the hospital room when mother and the infant were the only ones in the room.

The maternal grandparents reported that with her first child, mother would sleep and let the child cry instead of attending to the child’s needs; mother gave R.W. a hot bottle; and mother tried to smother R.W. Mother was living with roommates at the time of A.W.’s birth and did not have a separate room for herself and A.W. Mother’s roommate and A.W.’s father both abused controlled substances.

Hospital staff observed mother leave the hospital room and wander off when A.W. was crying. Despite attempts to teach mother to hold A.W. correctly, mother did not do so, claiming A.W. did not like to be held the way hospital staff instructed her. A.W. would be receiving a gastrostomy tube so that she could be fed. The hospital staff refused to allow mother to have unsupervised visits with A.W. because of their concerns about mother’s ability to care for A.W.

The social worker opined that neither mother nor father were capable of adequately caring for A.W., a special needs child.

Mother appeared with counsel at the July 17, 2017, detention hearing. Father made no appearance.³ The juvenile court ordered that A.W. be detained.

Between the detention and jurisdiction hearings, A.W. had two emergency surgeries; a third surgery was scheduled to address recurring infections in her jaw where metal posts had been inserted. The maternal grandparents were being assessed for placement of A.W. in their home; they needed special training on how to properly care for A.W. Other relatives also were being assessed for placement. A.W. was placed in a licensed foster care home.

³ Father did not appear in the juvenile court proceeding and is not a party to this appeal.

A public health nurse present during mother's visits with A.W. reported that mother "needs a lot of coaching and prompting" when feeding A.W. Of seven scheduled visits between mother and A.W., mother cancelled three, failed to show for another visit, and participated in three visits.

A.W. was scheduled to have the metal posts removed from her jaw on August 24, 2017. A.W.'s cleft palate would not be repaired until she was one year old due to the jaw extension procedure.

At the August 25, 2017, jurisdiction and disposition hearing, mother made an offer of proof that she loved A.W., was committed to reunifying with A.W., and was willing to participate in any services to assist with reunification. The juvenile court accepted the offer of proof.

The juvenile court found the section 300, subdivision (b) allegation to be true. The juvenile court found there was a substantial risk of detriment to A.W. if she were to be returned to mother's care because she has "some intellectual disabilities and difficulty understanding directives on how to care for a child with such extensive medical needs."

A.W. was adjudged a dependent of the juvenile court. Reunification services were ordered to be provided to mother. Reunification services were denied to father pursuant to section 361.5, subdivision (a).

The juvenile court informed mother that reunification services could be limited to six months and opined that it was "important" for mother to "make nothing but excellent progress in resolving the issues and learn how to take care of your daughter." Mother also was informed by the juvenile court that if she failed to make sufficient progress by the end of six months, the juvenile court could decide to end reunification services and schedule a hearing to set a permanent plan for A.W., which could result in termination of mother's parental rights.

The six-month status review report recommended that reunification services continue to be provided to mother. The report noted that mother had an appointment with Sierra Vista Child and Family Services (Sierra Vista), which mother failed to keep. Mother was placed on a hold status by Sierra Vista and a return appointment was scheduled. Sierra Vista had been asked to provide mother with individual parent education services, rather than group services.

Of the visits scheduled between mother and A.W. after the jurisdiction and disposition hearing and before the six-month status review, mother had been a “[n]o show” for nine visits. Mother cancelled two other visits, missing a total of 11 visits. Mother attended 26 visits.

Mother failed to make herself available to attend a medical appointment for A.W., even though the agency sent a car to pick mother up and drive her to the appointment. Valley Mountain Regional Center had been unable to assess A.W. because they could not contact mother; the social worker intervened and requested the evaluation.

Mother’s counsel appeared at the six-month review hearing on February 16, 2018, but mother was not present. The agency was changing its recommendation to request that reunification services be terminated. The juvenile court set the matter for a contested hearing.

The agency filed an addendum report. The addendum report stated that mother had failed to keep the return appointment with Sierra Vista. When the social worker asked mother to telephone and schedule a new appointment with Sierra Vista, mother responded that she did not have time. Mother stated she needed to travel to Angels Camp to visit her new boyfriend. Mother also stated she was busy selling “government telephones” and needed to deliver telephones.

As noted in the addendum report, mother acknowledged that Valley Mountain Regional Center had called her and left a message, but mother stated she was too busy to

return the call. Mother claimed she was busy providing day care for two children, six and nine years old, who belonged to her male friend. Mother also stated she was providing day care for other children.

Mother failed to attend the six-month review hearing because she was babysitting a friend's children. When mother failed to attend a scheduled visit with A.W., the social worker telephoned mother. Mother told the social worker she had missed the last two visits because she missed the alarm, could not find her car keys, and was sick. The social worker reminded mother that she had been given bus passes for transportation to visits. When the social worker suggested mother schedule an appointment with a physician if she was sick, mother stated she had “ ‘no time for the doctor.’ ” (Italics omitted.)

At the time the addendum report was prepared, mother was living in an unheated garage. Mother planned to get a heater. Mother stated there was room for A.W. in the garage.

In the addendum report, the social worker stated that initially the agency was recommending reunification services continue in order to provide mother with every opportunity to be successful in reunifying. Subsequently, however, the social worker opined that mother had demonstrated that reunifying with A.W. was not a priority. The recommendation was to terminate services to mother.

The contested six-month review hearing was held on March 22, 2018. Mother's attorney made an offer of proof that mother has “struggled to engage in services” because she had “issues with housing and transportation,” but that she loves A.W. very much. Mother's counsel acknowledged that mother had a “lack of progress in services” and “has some challenges that have made it difficult at times for her to engage.” However, mother's counsel objected to the termination of reunification services and the setting of a section 366.26 hearing.

The juvenile court found that mother's progress had been "very limited" and there was not a substantial probability A.W. could be returned to a parent if services were continued for another six months. The juvenile court found that mother "has not made substantive progress in resolving the issues that caused [A.W.] to be removed from her care, nor has she been able to demonstrate the ability to properly care for the needs of this very young child." Reunification services were terminated. The juvenile court ordered a section 366.26 permanent plan hearing be set.

The agency filed a section 366.26 report on July 9, 2018. The report noted that A.W.'s current caregivers were interested in adopting her, but not interested in legal guardianship. The prospective adoptive parents were knowledgeable about A.W.'s development and had demonstrated the ability to care for A.W. The prospective adoptive parents were able financially to support A.W. The social worker reported that A.W. was thriving in their care and "very much loved."

The social worker opined that the prospective adoptive parents were committed to adopting A.W. if parental rights were terminated.

At the July 20, 2018, section 366.26 hearing, mother's counsel made an offer of proof that mother felt visits with A.W. were "happy, playful and appropriate." In addition, the offer of proof was that mother would testify A.W. "recognizes her as the mother." Mother wanted to continue to maintain a relationship with A.W. because she was "the only parent that's really made an effort to bond with and care for" A.W. Counsel asked that the juvenile court find the beneficial parent-child relationship exception applied and that parental rights not be terminated.

Counsel for the minor and the agency both requested the juvenile court terminate parental rights and establish a permanent plan of adoption.

The juvenile court noted that mother cared about A.W., but the juvenile court had to consider what was best for A.W. Although mother maintained regular visitation,

mother failed to establish that termination of parental rights would be detrimental to A.W. The juvenile court found that A.W. was likely to be adopted. Mother's and father's parental rights were terminated, and it was ordered that adoption procedures be initiated.

Mother filed a notice of appeal on August 15, 2018.

DISCUSSION

Mother contends the juvenile court erred in terminating her parental rights because the juvenile court should have applied the beneficial relationship exception in section 366.26, subdivision (c)(1)(B)(i). She contends a legal guardianship, not adoption, was the appropriate plan for A.W. We disagree.

After reunification services are terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52 (*Celine R.*)) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, once the juvenile court finds by clear and convincing evidence that the child is likely to be adopted within a reasonable time, the court is required to terminate parental rights and select adoption as the permanent plan, unless the parent shows that termination of parental rights would be detrimental to the child under one of several statutory exceptions. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

“Under section 366.26, the statutory preference is to terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (b)(1).)” (*In re C.B.* (2010) 190 Cal.App.4th 102, 121.) There are statutory exceptions that “ ‘permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.’ [Citation.]” (*Id.* at p. 122, fn. omitted.) One such statutory exception to adoption applies where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26,

subd. (c)(1)(B)(i).) As the statutory language shows, there are two prongs to the exception: (1) regular visitation and contact; and (2) a beneficial parent-child relationship. (*Ibid.*)

“Satisfying the second prong requires the parent to prove that ‘severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’ [Citation.]” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.)

In order for the exception to apply, the parent-child relationship must “promote[] the well-being of the child *to such a degree as to outweigh* the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, *positive* emotional attachment such that the child would be *greatly* harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated. [¶] Interaction between natural parent and child will always confer *some* incidental benefit to the child.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575, italics added.)

Here, mother bears the burden of showing the exception applies. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300.) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; see *Celine R.*, *supra*, 31 Cal.4th at p. 53.)

The parent-child relationship exception “does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent.” (*Id.* at p. 1350.) Even a “loving and happy relationship” with a parent does not necessarily establish the statutory exception. (See *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

In determining whether the relationship between parent and child is beneficial, we look to such factors as “(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.) The juvenile court’s conclusion that mother did not satisfy the exception “turns on a failure of proof at trial, [such that] the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

The juvenile court’s conclusion that severing the parent-child relationship in this situation would not deprive A.W. of a substantial, positive emotional relationship such that she would be greatly harmed did not exceed the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A.W. was two months old when the section 300 petition was filed. A.W. was removed from mother’s care at the July 2017 detention hearing and remained out of mother’s custody through the time of the section 366.26 hearing a year later in July 2018. Thus, A.W. had spent barely two of her 14 months in mother’s care.

After the petition was filed, mother participated in visits with A.W., but needed regular coaching and direction from a public health nurse in order to properly feed A.W. Mother never progressed beyond supervised visits. Mother missed 11 visits with A.W. during the six months prior to the contested six-month review hearing. Mother was more interested in babysitting other people's children and visiting her boyfriend than participating in services pertinent to her own child. Mother did not make reunification with her own child a priority.

Even if mother interacted positively with A.W. during visits, mother has occupied the role of a friendly visitor, not a parental role, in the life of A.W. for the duration of the dependency proceeding, which was approximately one year. A.W. was placed in the home of relatives on September 8, 2017, who continued as her caregivers thereafter and wanted to adopt A.W. Thus, for the majority of A.W.'s lifetime, mother has not been serving in a parental role and any interaction between mother and A.W. confers at best an incidental benefit. The caregivers, the prospective adoptive parents, have been filling the parental role.

The caregivers expressed an interest in adopting A.W.; they were not interested in assuming care of A.W. under a legal guardianship. The prospective adoptive parents were knowledgeable about A.W.'s development and had demonstrated the ability to care for A.W. The prospective adoptive parents were able financially to support A.W. The social worker reported that A.W. was thriving in their care and "very much loved."

There is no evidence of a substantial, positive emotional attachment between mother and A.W. such that she would be harmed by severing the parental relationship. Mother has failed to demonstrate that A.W. would suffer any detriment as a result of terminating her parental rights. In fact, the evidence demonstrates that A.W. will benefit by being adopted into a loving home with prospective adoptive parents to whom she is

bonded and who are able and willing to provide the care and attention A.W. needs. Adoption allows A.W. to achieve permanency and stability in a family setting.

The evidence does not compel a finding in favor of mother as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) Accordingly, we find the juvenile court did not err in rejecting mother's assertion that the beneficial parent-child exception to adoption applied in this case.

DISPOSITION

The order terminating parental rights and setting a permanent plan of adoption for A.W. is affirmed.